

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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**JUN 22 1998**

**PATRICK FISHER**  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANTHONY TAYLOR,

Defendant-Appellant.

No. 97-3301  
(D.C. No. 95-CR-10033  
&  
97-3331-MLB)  
(D. Kan.)

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**ORDER AND JUDGMENT** \*

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Before **TACHA** , **LOGAN** , and **LUCERO** , Circuit Judges.

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Defendant seeks review of the district court's order denying his motion to modify, vacate, or set aside his sentence pursuant to 28 U.S.C. § 2255. <sup>1</sup> Before defendant may proceed on appeal, however, he must secure a certificate of appealability from this court, which requires "a substantial showing of the denial

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

<sup>1</sup> After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

of a constitutional right.” 28 U.S.C. § 2253(c)(2). Based upon our review of the record as a whole, we conclude that defendant has failed to make such a showing.

Defendant’s motion to file a reply brief is GRANTED, with the exception of those attachments to the brief that were not before the district court.

Defendant’s application for a certificate of appealability is DENIED, and the appeal is DISMISSED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

Carlos F. Lucero  
Circuit Judge